

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Room 250
9:00 a.m.
January 20, 2021
Zoom

MINUTES

DIVISION STAFF PRESENT:

Jonathan Stewart, Division Director
Kadee Wright, Chief Investigator
Joy Natale, Analyst
Justin Barney, Hearing Officer
Mark Fagergren, Licensing Director
Maelynn Valentine, Board Secretary
Sarah Nicholson, Investigator
Chris Martindale, Investigator
Mark Schaerrer, Investigator
Van Kagle-Investigator
Kendell Christiansen, Education Coordinator
Jenni Myers, Investigator
Karen Duncan, Investigator
Laurel North, Investigator
Judith Jensen, Assistant Attorney General

COMMISSION MEMBERS PRESENT:

Richard Southwick, Chair
Lori Chapman, Vice Chair
Marie McClelland, Commissioner
Randall Smith, Commissioner
James Bringhurst, Commissioner

PUBLIC MEMBERS PRESENT:

Dan Naylor
Kreg Wagner
Shane Norris
Vern Myer
Carey Siana

The January 20, 2021 meeting of the Utah Real Estate Commission began at 9:01 a.m. with Chair Southwick conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Meeting Without Anchor Location-Chair Southwick

Approval of Minutes – A motion was made and seconded to approve the minutes of the December 16, 2020, meeting of the Commission as written. Vote: Chair Southwick, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved.

Public Comment

None

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart reported that the State of Utah has a new administration. Governor Cox and Lt. Governor Henderson along with a new Executive Director to the Department of Commerce, Margaret Busse, the Division and Department are looking forward to working with them.

Governor Cox issued an executive order that will have an impact on the Division and the industry. The executive order is titled "Requiring a review of all regulated occupations and professions" the order states that no later than June 30, 2021 each agency shall review administrative rules and other regulations for occupational or professional licenses within the agency scope of authority and identify rules and regulations that are no longer necessary or can be amended to reduce barriers to working while still protecting the health, safety and wellbeing of Utah residents. A report must be submitted to the governor's office including the recommendations. The Division will be working on recommendations to send to the Governor's office by the deadline. The Division, in past years has done this and it did result in some changes to rules and statute to reduce regulation.

Director Stewart reported that the legislative session began yesterday January 19, 2021. The Division is currently proposing a bill on broker supervision. Shane Norris brought this proposed change to the Division and Commission's attention a few months ago and since then the Division and Commission have formed a committee to discuss the restriction in statute that allows a principal broker to oversee up to three locations and to clarify what broker supervision is and what should be required before moving forward with a statutory change. The committee met and discussed several

options as far as what can be changed in administrative rules. Mr. Gillies with the Ag's office did a lot of research on what is required in other states and all members of the committee agreed to move forward with a statutory change. Director Stewart informed the Commission that if they are comfortable with moving forward that he will speak with Representative Musselman and the Office of Legislative Research and to get that statutory change in the bill file.

Chair Southwick agreed on moving forward. Mr. Norris agrees completely with Director Stewart and the importance on putting real regulations in place as to how brokerages should be supervising depending on size and scope. Mr. Norris also agreed to move forward. Kreg Wagner stated that the language for the proposed administrative rule isn't something that a principal broker couldn't meet. Mr. Wagner agrees with other committee member's comments and believes they are ready to move forward with the change. Director Stewart explained that an official motion is not needed to move forward and is only making sure the Commission is comfortable with the changes to move forward with a statutory change. Director Stewart will work with Mr. Barney to get language for the bill to the Office of Legislative Research.

Margaret Busse joins the Commission meeting and introduces herself to the Commission and Staff, she looks forward to working with the Division and getting to know the work of the Commission.

Director Stewart reported on Trust Account Rules. A committee was formed and a meeting was held last week and they discussed several ways that the Division could increase public protection without being over bearing on trust account rules. Property Management was a focus on the discussion as any rule that changes would impact their business. At least two or three of the proposals that have been discussed in the committee meeting a majority of the members were comfortable adding to administrative rule. Further discussion and evaluation will be focused at the next committee meeting.

Director Stewart reported that there are currently three different rule filings that contain some overlap in the sections that they cover. Director Stewart suggests the most proficient way to address this is to have all of them ready and prepared for the Commission to vote on at next month's Commission meeting.

Director Stewart reported on a topic that has been brought up in the trust account committee and it pertains to an issue with mobile homes. The UAR hotline and Director Stewart have received questions regarding the

regulation of mobile homes. Mobile homes are personal property and not real property. The questions relate to, is it appropriate for a real estate agent or broker to use a REPC (Real Estate Purchase Contract) on a mobile home transaction. Another question asked is with trust accounts if a sales agent is assisting someone with a mobile home transaction are they allowed to deposit earnest money in a real estate trust account.

Mr. Wagner stated that this is touchy issue as real estate agents are typically involved in the sale or transaction of a mobile home. Mr. Wagner does not believe the REPC is the appropriate form when land is not being conveyed with the mobile unit. Mr. Wagner asked if a state form or a UAR form should be developed. Mr. Wagner suggested a hybrid of some sort of the REPC components as most agents will use the REPC for due diligence reasons. Mr. Wagner asked what guidance the Division wanted to give knowing that its technically personal property, but real estate agents are involved in the transactions.

Chair Southwick stated that a simplified form should be created to assist agents with these transactions. Mr. Wagner brought this topic up to the Forms Chair and there seemed to be sense of hesitancy about the UAR drafting this form when it does not pertain to real estate. It is understood that it has real estate implications, but is labeled as personal property. Mr. Wagner believes there should be some carve out in administrative rule to allow licensees to help facilitate this type of transaction when it does not involve real property. Director Stewart stated that he felt that same hesitancy as far as a state approved form being drafted as a real estate license is not required to help someone with a mobile home transaction. Director Stewart suggested adding the topic to next month's agenda so the Commission and Division staff have time to further discuss.

Chair Southwick asked how often does the Division receive complaints regarding this issue. Ms. Wright explained that the Division almost never deals with this issue and can think of only one appraisal case that dealt with a mobile home, but that is it. Karen Duncan an Investigator with the Division stated that she assisted with a mobile home transaction when she was a real estate agent and the uniqueness of it was that a mobile home has a VIN (Vehicle Identification Number) and closing is done at the DMV, not at a title company. Commissioner Smith agrees with Mr. Wagner's comments and believes the UAR should handle it from a Forms Committee standpoint. Ms. Wright added that the Division does not have jurisdiction over mobile home transactions unless land is attached and agreed with Commissioner Smith.

Commissioner Bringhurst stated that with affordable housing issues that the

mobile home buyer base may be a bit more vulnerable and may not understand the pro and cons to purchasing a mobile home. Interest rates are also higher on mobile homes and his main interest is protecting the buyers. Chair Southwick would like to further discuss at next month's meeting. Director Stewart stated that it will be added to the agenda and communication will be open for individuals to suggest ideas or thoughts on the topic.

ENFORCEMENT REPORT – Kadee Wright

Ms. Wright reported that in the month of December the Division received 5 complaints; closed 20 cases; leaving 458 open cases. There are 9 cases pending with the AG's office.

Stipulations Presented by Kadee Wright

Laurie Meacham

Kyle Wilson

Randy Johnson

Stipulations Presented by Joy Natale

Samuel Dodd

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren addressed the Commission with reasons why an individual might perform transactions outside of the RELMS system in response to a Stipulation that was presented. In this specific instance, an individual submitted a paper change card. An individual may submit a paper card if there are technological errors. The Division is no longer requesting credit card information on a paper change card and a licensing staff member will call the individual for that information. Commissioner Smith asked if this specific individual was contacted by licensing staff to receive payment. Mr. Fagergren is not aware in this specific individuals' case. Van Kagie an Investigator with the Division stated that the individual was reached out to for payment via email and that they needed to make contact with the Division for payment. Mr. Fagergren stated that the licensing staff makes a reasonable attempt to contact individuals but ultimately the burden is on the licensee. Chair Southwick asked if the broker is notified in these types of situations. Mr. Kagie explained that in this case, the broker associated with the license was notified. Chair Southwick stated that the responsibility is on the licensee to complete the process and follow through.

Mr. Fagergren reported that there has been a net increase of 121 licensees in the month of December. That's a net increase of 104 licensees per month. The Division is seeing a continued growth in spite of the current global

pandemic.

Mr. Fagergren reported on conditional licensing. To meet the demand of licensees additional testing centers were opened. Last month there were 64 individuals that were in the phase 2 of the conditional license process, meaning that they were licensed between September 1, 2020 and October 31, 2020. Division staff reached out the 64 individuals and that number has been reduced to a final number of 13. Those 13 individuals' licenses were suspended and Mr. Fagergren personally contacted all the brokers associated with those licensees and heard back from all but 1. That should be a completion of conditional licensing. In November 2020 any individual who received a new license had to be fingerprinted as a part of the application process.

BOARD AND INDUSTRY RULE UPDATE – Justin Barney

Mr. Barney presented a stipulation for Casey Edward McClung.

Mr. Barney gave an update on the proposed rule amendment regarding trust account rules and broker supervision. The committee is moving forward with a draft proposed rule amendment will be presented at next month's Commission meeting. In reducing regulation, the Division is proposing to adjust the discretionary denials for certain criminal history and doing some major revisions of eight to ten sections to the current Real Estate Administrative Rules.

Licensing Hearing

Mark Padilla Viau

A motion was made and seconded to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner McClelland, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved.

CLOSED TO PUBLIC

Executive session from 11:16 a.m. to 12:11 p.m.

OPEN TO PUBLIC

A motion was made and seconded to approve the stipulation for Randy Johnson. Vote: Chair Southwick, yes; Vice Chair Chapman, yes;

Commissioner McClelland, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved with concurrence from the Division.

A motion was made and seconded to approve the stipulation for Lauri Meacham. Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner McClelland, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved with concurrence from the Division.

A motion was made and seconded to reject the stipulation for Kyle Wilson. Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner McClelland, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved with concurrence from the Division.

A motion was made and seconded to approve the stipulation for Casey Edward McClung. Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner McClelland, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved with concurrence from the Division.

A motion was made and seconded to reject the stipulation for Samuel Dodd. Vote: Vice Chair Chapman, yes; Commissioner McClelland, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved with concurrence from the Division.

A motion was made and seconded to deny the license for David Padilla Viau. Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner McClelland, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved.

A motion was made and seconded to adjourn the meeting. Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner McClelland, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved. The meeting adjourned at 12:18 p.m.